IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 135 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI :

HONOURABLE MR.JUSTICE J.C.UPADHYAYA :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DITABHAI RAMESHBHAI DAMOR - Appellant
Versus
STATE OF GUJARAT - Opponent

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Appearance :
MRS SHILPA R SHAH for Appellant
MS MITA PANCHAL, APP for Opponent

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI
and
HONOURABLE MR.JUSTICE J.C.UPADHYAYA

Date : 28/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.C.UPADHYAYA)

1. By judgment and order dated 28.1.2000 rendered by the learned Additional Sessions Judge, Panchmahal camp at Dahod in Sessions Case No.285/1998, the present appellant Ditabhai Rameshbhai Damor, who was original accused in the aforesaid Sessions Case was convicted for the offence of murder, punishable under Section 302 of Indian Penal Code ('IPC' for short) and was sentenced to imprisonment for life and fine of Rs.500/-, in default to suffer simple imprisonment of 15 days, has preferred this appeal challenging the conviction and sentence.

2. The brief facts of the case of the prosecution are as under:-

2.1 It is the case of the prosecution that the incident took place at around 18.45 hrs. on 23.8.1998 in Village Rabdal, Taluka Dahod. The deceased Dineshbhai Shamabhai Damor and accused Ditabhai Rameshbhai Damor were residing in the Village. As per the case of the prosecution, there was a dispute about partition of land between the two families i.e. the family of the accused and the family of the deceased. On 23.8.1998, at about 5.30 p.m. in the evening, the deceased went towards his field and, thereafter, came near the cabin of Vitthal Bharwad, and at that time it was about 6 p.m., and the accused met the deceased near the

cabin and started quarreling with the deceased. As per the case of the prosecution, the complainant Menaben who happened to be the wife of the deceased was at her residence and she heard the noise of the quarrel between the deceased and the accused, and thereupon she herself, her sister-in-law Nanduben and her brother-in-law Manubhai came near the cabin. They intervened and they were carrying back the deceased towards their house and at that time as per the case of the prosecution, the accused went to his house, brought Dhariya and came near the three persons and inflicted a blow of Dhariya on the left side neck of the deceased. The accused thereafter ran away along with the weapon – Dhariya. The deceased was brought to hospital, where he was declared dead. Wife of the deceased, Menaben lodged an FIR on the same day i.e. on 23.8.1998, and the FIR was registered at 21.30 hrs. After the FIR was registered, the Investigating Police Officer went to the scene of offence, prepared '*panchnama*' of the scene of offence in presence of '*panchas*' and recorded statements of witnesses, arrested the accused and recovered the '*muddamal*' weapon – Dhariya by drawing discovery '*panchnama*' in presence of '*panchas*'. The clothes of the deceased were recovered by drawing '*panchnama*'. Recovered articles were sent to the Forensic Science Laboratory for analysis. After the completion of investigation, the Investigating Police Officer filed chargesheet against the accused for the offence punishable u/s.302 of IPC in the Court of learned Judicial

Magistrate First Class, Dahod, who committed the said case in the Court of learned Additional Sessions Judge, Panchmahal, camp at Dahod, and the learned Additional Sessions Judge framed charge against the accused for the offence punishable u/s.302 of IPC at Exhibit 2. Since the accused did not plead guilty, the prosecution adduced oral and documentary evidence.

2.2 During the course of trial, the prosecution has examined following witnesses to prove the guilt against the appellant – accused namely, PW – 1 Shamabhai Manglabhai at Exhibit – 5, PW – 2 Menaben Dineshbhai at Exhibit – 6, PW – 3 Manubhai Somabhai (Shamabhai) at Exhibit – 8, PW – 4 Pravinbhai Pratapbhai at Exhibit – 10, PW – 5 Vilubhai Gomjibhai at Exhibit – 12, PW – 6 Maganbhai Shamajibhai, Exhibit – 16, PW – 7 Narsingbhai at Exhibit – 18, PW – 8 Dhulabhai Tejabhai at Exhibit – 19, PW – 9 Rajendrabhai Kishorilal at Exhibit – 21, PW – 10 Kalubhai Nurabhai at Exhibit – 23, PW – 11 Vitthalbhai Haribhai at Exhibit – 24, PW – 12 Kalubhai Ganabhai at Exhibit – 25, PW – 13 M.J.Badmalia at Exhibit – 26, and PW – 14 S.K.Ambegaonkar at Exhibit – 27.

2.3 During the course of trial, the prosecution produced and proved the following documentary evidence namely FIR at Exhibit – 7, '*Inquest Panchnama*' at Exhibit – 11, '*Panchnama*' of the place of offence at

Exhibit – 13, '*discovery panchnama*' of the weapon at Exhibit – 14, '*Panchnama*' of recovery of clothes of the deceased at Exhibit – 20, '*post-mortem notes*' at Exhibit – 22, '*Inquest Form*' at Exhibit – 32, F.S.L. Reports at Exhibit – 28 to 30, Serological Report at Exhibit – 37.

2.4 After the evidence was over and the prosecution closed its evidence, the learned Additional Sessions Judge recorded statement of the accused u/s.313 of Criminal Procedure Code, 1973, wherein the accused simply denied all the incriminating circumstances brought to his notice by the learned Additional Sessions Judge during the course of his further statement. The accused did not adduce any oral or documentary evidence and stated that he was falsely involved in the case.

2.5 Learned advocate for the appellant – accused Mrs.Shilpa S.Shah vehemently argued, drawing the attention of this Court to the deposition of complainant Menaben Dineshbhai recorded at Exhibit – 6 and the deposition of Manubhai Somabhai recorded at Exhibit – 8, coupled with the depositions of Shamabhai Mangalabhai Damor recorded at Exhibit – 5 and Vitthalbhai Haribhai Bharvad recorded at Exhibit – 24 and submitted that the two witnesses Menaben and Manubhai though claimed to be the eye-witnesses, have not actually seen the alleged commission of offence. There are major contradictions in their depositions which are fatal to the case of the prosecution. The

place where the incident is alleged to have taken place as per the case of the prosecution, is totally changed during the course of oral evidence of these two witnesses. The '*panchnama*' of the scene of the offence and the sketch prepared by the Circle Officer suggest the place of offence near the cabin of Vitthalbhai, whereas so- called eye-witnesses have totally changed the place of offence. Even witnesses are not certain as to whether, after they rescued the deceased from the accused, thereafter they took the deceased towards the house of the deceased or towards the Government well, which is totally on opposite direction from the house of the deceased.

2.6 It is further submitted by learned Advocate Mrs.Shilpa R.Shah that as per the case of the prosecution, after the quarrel was over, the accused went to his house to bring Dhariya and he actually brought Dhariya and came near the deceased and inflicted the blow of Dhariya on the body of the deceased. That, if this case is believed as it is, then considering the distance of the house of the accused from the so-called scene of offence and comparatively short distance between the house of the deceased and the scene of offence, it is impossible to believe that the accused had enough time to go to his house and to bring Dhariya, and to again come near the deceased and to inflict blow, before the deceased and his wife Menaben, his brother Manubhai and his sister Nanduben reached their house.

2.7 It is further strenuously submitted that even Menaben admitted in her deposition that if any quarrel takes place near the cabin of Vitthalbhai, the noise of the quarrel cannot be heard by anybody who is sitting in her house. That, therefore the prosecution failed to prove as to under what circumstances and how Menaben, Manubhai and Nanduben after hearing the noise went to the place of offence.

2.8 The learned advocate Mrs.Shilpa R.Shah for the appellant – original accused therefore submitted that considering the overall evidence, oral and documentary adduced by the prosecution, the prosecution has miserably failed to prove the case beyond reasonable doubt. There is a lacuna in the evidence adduced by the prosecution and the benefit of such lacuna should be given to the accused, and therefore, it is submitted that the appeal be allowed and the impugned judgment and order passed by the learned Additional Sessions Judge, Panchmahal camp at Dahod be set-aside and the appellant – accused be acquitted.

2.9 Alternatively, the learned advocate Mrs.Shilpa R.Shah submitted that here it is a case of solitary blow without any premeditation or any intention to kill. That it has come in evidence that before the incidence, the deceased was in a drunken condition and he was abusing the accused and the quarrel took place, and therefore, the deceased instigated the accused and in a heat of passion and sudden

provocation, the incident took place, and therefore, the Additional Sessions Judge committed error in convicting the accused for the offence of murder punishable u/s.302 of IPC. But, if the case of the prosecution as it is, is considered, this is a case of an offence punishable u/s.304, Part-II of the IPC. Therefore, it is submitted that the appeal deserves to be allowed and the accused deserves to be acquitted, but alternatively if this Court comes to the conclusion that the prosecution has proved the case beyond reasonable doubt, then the only offence that the accused has committed can be said to be an offence punishable u/s.304, Part-II of the IPC.

3.0 As against this, the learned A.P.P. Ms.Mita Panchal, supported the judgment and order delivered by the Additional Sessions Judge and submitted that the learned Additional Sessions Judge has rightly come to the conclusion that the prosecution has proved its case beyond any reasonable doubt and rightly convicted the accused for the offence punishable u/s.302 of IPC. That as per the FIR at Exhibit – 7, there are 3 eye-witnesses and they are complainant Menaben, who is wife of the deceased, Manubhai, who is the younger brother of the deceased and Nanduben, who is the sister of the deceased. Out of them, the prosecution has examined complainant Menaben and brother of the deceased Manubhai in capacity as eye-witnesses. There are no major contradictions which may prove fatal to the case of the prosecution in

their depositions, and their depositions corroborate the FIR at Exhibit – 7. It is submitted that even considering deposition of witness Vitthalbhai Haribhai Bharvad at Exhibit – 24, this witness clearly deposed that before the actual incident of murder, at about 4.30 p.m. the accused and the deceased were quarreling near his cabin and he requested both of them not to quarrel near his cabin and thereupon both the accused and the deceased went to their respective house. That, thus the presence of the accused at the time of occurrence is not only established by the eye-witness whose depositions were recorded in the case, but even by this witness Vitthalbhai, the presence of the accused is established.

3.1 Our attention was also drawn to the deposition of witness Shamabhai Mangalabhai Damor at Exhibit 5, who is the father of the deceased, and it was submitted that as per the deposition of this witness, immediately after the incident, one of the eye-witnesses Manubhai went to inform about the incident to this witness, and the witness Shamabhai immediately reached the place of offence and he saw his son Dinesh profusedly bleeding, having serious injuries on his left shoulder.

3.2 It is submitted that if the oral evidence adduced by these witnesses is considered as a whole, in light of the '*panchanama*' of scene of offence at Exhibit – 13, and the sketch prepared by the Circle Officer produced at Exhibit – 17, it becomes crystal clear that neither the

sequence of the offence as per the case of the prosecution, is changed; nor the scene of offence is changed. Therefore, it was submitted that there is no reason to discard the ocular evidence adduced by the eye-witnesses, which is supported by other witnesses and the circumstantial evidence. That, therefore, the appeal deserves to be dismissed.

3.3 About the alternative suggestion regarding the offence being one punishable u/s.304, Part-II of the IPC, as suggested alternatively during the course of arguments on behalf of the appellant, the learned A.P.P. Ms.Mita Panchal submitted that considering the circumstances under which the offence has taken place, the nature of dangerous weapon Dhariya used by the accused, and the force used by the accused to inflict the blow of such dangerous weapon on the vital part of the body of the deceased, together with the medical evidence adduced by the prosecution on record in the form of deposition of Medical Officer, who performed the '*postmortem*' and the '*postmortem report*', it becomes crystal clear that the only offence committed by the accused is an offence of murder punishable u/s.302 of IPC, and there is nothing on record to come to the conclusion that the accused has committed any lesser offence punishable u/s.304, Part-II of IPC.

4.0 The complainant Menaben Dineshbhai Sama was examined before the Trial Court at Exhibit – 6. In her deposition on oath, she

stated that the deceased was her husband, and she and her husband were residing together with her father-in-law Shamabhai Mangalabhai Damor, her brother-in-law Manubhai Somabhai and sister-in-law Nanduben. She stated that on the day of the incident, her father-in-law Shamabhai Mangalabhai Damor had gone to Village Chosala and remaining family members including herself were at their house. She stated that at about 6 p.m., her husband Dineshbhai who had gone to their field, had come near the cabin which her husband had let out to one Vitthalbhai Bharwad. That, she heard the noise of quarrel, and thereupon, she herself, her brother-in-law Manubhai and her sister-in-law Nanduben came out of their house and went towards the cabin. While they were returning back to their house, carrying her husband Dineshbhai, at that time, the accused went to his house and brought Dhariya and inflicted blow of Dhariya on the left shoulder of her husband Dineshbhai by saying that - “Take it, I give you the land”. That, after inflicting the Dhariya blow, the accused ran away. She stated that thereafter her father-in-law came to the place where the incident took place. During the course of her deposition, the '*muddamal*' article – Dhariya was shown to her and she identified the same being used by the accused at the time of offence. She further admitted that she had lodged the FIR before the police, which bears her thumb-mark, which is produced at Exhibit – 7.

4.1 However, in her cross-examination, she stated that the distance between her house and the cabin is approximately 200 – 300 ft., which may take about 20 – 25 minutes to cover-up. She further stated that it is true that if any quarrel takes place near the cabin, then the noise cannot be heard inside her house. However, at the same time, she also stated in her cross-examination that she heard the noise of quarrel and she came out of her house and went towards cabin. Considering paragraph 12 of the judgment rendered by the learned Additional Sessions Judge, the learned Additional Sessions Judge has discussed this aspect of the matter at length in his judgment. Even before the trial Judge, the same argument was advanced on behalf of the defence, which is now advanced on behalf of the appellant before us that Menaben could not have heard the noise of the quarrel while she was inside her house, and therefore, it is impossible to believe that upon hearing the so-called noise, she came out of her house and went to the cabin, where the alleged quarrel was going on. Referring to paragraph – 12 of the impugned judgment, to meet with such arguments, the learned Additional Sessions Judge had assigned cogent and consistent reasons on the basis of the evidence adduced by the prosecution. That the deposition of this witness Menaben as a whole is required to be considered and said deposition is supported by the deposition of second witness Manubhai that after hearing the noise of quarrel, they went near

the cabin. It cannot be said that the complainant – Menaben, who not only says in her deposition that upon hearing the noise of the quarrel, they came out of their house and went towards the cabin, but the said fact is corroborated by the deposition of second eye-witness Manubhai. Therefore, her deposition as a whole is required to be considered. Even considering the '*panchnama*' of the scene of the offence at Exhibit – 13, coupled with the sketch prepared by the Circle Officer at Exhibit – 17, it becomes clear that the distance between the house of the deceased and the scene of offence is about 117 ft., and in between these two spots, neither there is any intervening house or any obstruction. Under such circumstances, the learned Judge in the impugned judgment, rightly came to the conclusion that the 3 eye-witnesses, upon hearing the noise and shouting, came to the place where the quarrel was going on between the deceased and the accused.

4.2 Considering the deposition of complainant Menaben, who herself is eye-witness to the scene of occurrence, which is supported by second eye-witness Manubhai Somabhai, it has come in evidence that when they reached near the cabin, the accused was quarreling with the deceased, and they intervened and they were taking back the deceased towards their house, at that time the accused went to his house and brought Dhariya and inflicted blow of Dhariya on the body of the deceased. However, in this connection, considering the FIR at Exhibit –

7, it is true that the complainant had stated in it that when they reached near the Government well, at that time the accused inflicted fatal blow with Dhariya on the body of the deceased. In this connection, on behalf of the appellant, relying upon the sketch at Exhibit – 17, it was suggested that from the place of offence, the house of the deceased is situated towards eastern side, whereas the Government well is shown towards western side of the place of offence. And thus, the well is situated completely towards opposite direction than the house of the deceased. Therefore, it is submitted that this is a vital lacuna in the case of the prosecution, and the entire place of offence is changed when the evidence was adduced by the prosecution before the Trial Court. Now, in this connection, again, if the deposition on oath of complainant Menaben recorded at Exhibit – 6 is considered, she consistently deposed that upon hearing the noise of the quarrel, she herself, her sister-in-law Nanduben and her brother-in-law Manubhai came out from their house and went towards the cabin where the accused was quarreling with the deceased. They rescued the deceased and while they were bringing back the deceased to their house, at that time, the accused came with Dhariya and inflicted the fatal blow on the body of the deceased. In her deposition, she nowhere stated that when the fatal blow was inflicted, at that time, they were passing nearby the Government well. Even during the course of her cross-examination, on behalf of the accused, nowhere a

suggestion is put to her, drawing her attention to the FIR at Exhibit – 7, that the offence never took place while they were taking the deceased back towards the house, but, the alleged offence took place while they were proceeding towards totally an opposite direction i.e. towards the well. Moreover, considering the deposition of P.S.I. Mahesh Badmaliya recorded at Exhibit – 26, he stated that he had recorded the complaint of the complainant Menaben, which is at Exhibit – 7. Even considering his cross-examination on behalf of the accused, nowhere it was suggested to him on the basis of FIR at Exhibit – 7, that after the quarrel was over and the deceased was rescued, complainant – Menaben, Nanduben and Manubhai along with the deceased were proceeding towards the Government well. Even considering the deposition of second eye-witness, Manubhai at Exhibit – 8, he nowhere stated that after rescuing the deceased, along with the deceased, they were proceeding towards the Government well and there the offence took place. Under such circumstances, considering the evidence as a whole, it cannot be said that during the course of recording of evidence, the witnesses tried to change the place of offence.

4.3 As stated earlier, out of the 3 eye-witnesses, the prosecution examined Menaben who is complainant – cum – eye-witness as well as eye-witness Manubhai Somabhai at Exhibit – 8. We need not repeat here the entire deposition of second eye-witness Manubhai in this judgment,

but suffice it to say that, Manubhai fully corroborates the deposition of complainant – cum – eye-witness Menaben. No major contradictions are there in their depositions. However, referring the depositions of Manubhai and complainant Menaben, on behalf of the appellant, it was suggested that there is major contradiction in their depositions regarding the fact as to how witness Shamabhai Mangalabhai, who is examined at Exhibit – 5 and who happens to be the father of the deceased as well as the witness Manubhai and the father-in-law of complainant Menaben, came to the place of offence after the offence was over. As per the deposition of witness Shamabhai at Exhibit – 5, his son, witness Manubhai, came before him while he was in the house of one Maniya and informed him about the incident, and thereupon he went to the place of offence. Even Manubhai in his deposition at Exhibit – 8 admitted that he went to inform his father, and thereafter his father came to the scene of the offence. However, Menaben in her deposition at Exhibit – 6 narrating the incident, stated that her father-in-law had also come to the place of offence. It is true that she nowhere stated that after the incident was over, Manubhai went to inform about the incident to his father Shamabhai. However, considering the deposition of witness Shamabhai Mangalabhai at Exhibit – 5, he clearly admitted that he has not seen the offence being committed, and therefore, he is not the eye-witness. The only relevance of his deposition is about the motive behind this offence.

He happened to be the brother of the father of the accused, and in his deposition at Exhibit – 5, he stated that on the issue of land, father of the accused had raised dispute with him. Even he stated that before this incident, one another quarrel had taken place in past about the land and in the said quarrel, accused as well as his father Ramesh had beaten his son Dinesh. Under such circumstances, it cannot be said that there is any major contradiction between the deposition of Menaben and witness Manubhai, which would amount to lacuna in the case of the prosecution, which will create any doubt about the genuineness of the case of the prosecution.

4.4 The prosecution has examined witness Vitthalbhai Haribhai Bharvad at Exhibit – 24, and in his deposition he stated that he is tenant in the cabin owned by the deceased. He further stated that the day on which the incident occurred and Dinesh died, on that day at about 4.30 p.m., near his cabin, accused and deceased Dineshbhai had come. They both started abusing each other and therefore, he told both of them not to quarrel near his cabin and go to their home. That thereafter they both went to their respective home. It is pertinent to note that in paragraph – 6 of his cross-examination on behalf of the accused, his attention was drawn to his statement recorded by police, and he stated that it is true that in his police statement, he had stated that wife of Dinesh and his sister etc. had come to his cabin and they took away Dinesh from there.

Under such circumstances, not only considering the deposition of eye-witnesses Menaben and Manubhai, the presence of the accused at the time of incidence is established, but considering the cross-examination of this witness Vitthalbhai, he also admitted the presence of the accused near his cabin.

5.0 The prosecution has produced '*Inquest panchnama*' at Exhibit – 11, and to prove it, the prosecution has examined '*panch*' Pravinbhai Pratapsinh at Exhibit – 10. '*Panch*' Pravinbhai in his deposition narrated the injury on the body of the deceased, and admitted his signature in the '*panchnama*'. He therefore supported the '*panchnama*'. However, the prosecution produced the '*panchnama*' of the scene of offence at Exhibit – 13 and the two '*panchas*', Vilubhai Gomjibhai Sangada examined at Exhibit – 12 and Teriyabhai Narsingbhai Bhuriya examined at Exhibit – 18 turned hostile and did not support the contents of the '*panchnama*' at Exhibit – 13. Likewise, the prosecution produced the '*panchnama*' of the discovery of weapon – Dhariya at Exhibit – 14 and the two '*panchas*' Vilubhai Gomjibhai Bhuriya, examined at Exhibit – 12 and Kalubhai Nurabhai Meda, examined at Exhibit – 23 turned hostile and did not support the contents of the '*panchnama*' at Exhibit – 14. However, considering the deposition of investigating Police Officer, P.S.I. Mahesh Badmaliya at Exhibit – 26, in his deposition, he stated that in presence of '*panchas*', '*panchnama*' of the place of offence was drawn, and in his

presence, both the '*panchas*' signed it. Considering the deposition of second investigating Police Officer, P.S.I. Sanjubhai Ambeganvkar recorded at Exhibit – 27, he stated that the accused had voluntarily shown his readiness and willingness about the discovery and recovery of the weapon – Dhariya, and in presence of '*panchas*', the accused traced out the weapon – Dhariya, which was recovered by drawing the '*panchnama*' at Exhibit – 14. Thus, the facts regarding drawing the '*panchnama*' of the scene of offence and the '*panchnama*' regarding discovery and recovery of the weapon – Dhariya are established by the prosecution during the course of depositions of two investigating Police Officers. Still, however, if it is believed that the '*panchas*' did not support the contents of both the '*panchnamas*', then so far as the '*panchnama*' of the scene of offence at Exhibit 13 is concerned, the prosecution examined the Circle Officer Maganbhai Shamjibhai Bilwal at Exhibit – 16 and he stated that he has actually visited the site and prepared the sketch, which is produced at Exhibit – 17 after visiting the site and considering the '*panchnama*' of the scene of offence. Thus, the sketch at Exhibit – 17 is duly proved by this witness Maganbhai Shamjibhai in his deposition at Exhibit – 16, which contains all the details of '*Panchnama*' of scene of offence at Exhibit – 13, So far as the weapon Dhariya is concerned, as stated earlier, during the course of deposition of both the eye-witnesses i.e. Menaben at Exhibit – 6, and Manubhai at Exhibit – 8,

weapon – Dhariya was shown to both these witnesses during the course of their depositions, and both of them admitted that the accused inflicted fatal blow on the body of the deceased by the '*muddamal*' Dhariya. The prosecution produced at Exhibit – 20, the '*panchnama*' regarding recovery of cloth of the deceased, and to prove it, the prosecution examined '*panch*' witness Dhulabhai Tejabhai Hathila at Exhibit – 19 and this '*panch*' witness supported the contents of the '*panchnama*' at Exhibit – 20. In this connection, considering the F.S.L. report at Exhibit – 29 together with Serological Report at Exhibit – 31, it clearly transpires that the clay which was recovered from the place of offence was blood-stained and the human blood was found in it. Regarding the pant and underwear recovered from the body of the deceased, human blood of group – 'A' was traced.

5.1 In light of the above discussions, it clearly transpires that the learned Additional Sessions Judge did not commit any error while appreciating the evidence adduced by the prosecution on record. However, as stated above, by way of an alternative argument, the learned advocate Mrs.Shilpa R.Shah on behalf of the appellant submitted that even if this Court comes to the conclusion that the prosecution successfully proved its case, yet it cannot be said that the offence which was committed by the accused was murder. It was submitted that in fact, at the most, the offence which can be said to have been committed by

the accused may fall u/s.304 of IPC being offence of culpable homicide not amounting to murder. On this count, the learned A.P.P. Ms.Mita Panchal vehemently submitted that the learned Additional Sessions Judge rightly came to the conclusion that the accused had committed offence of murder punishable u/s.302 of IPC, and for that purpose the learned Additional Sessions Judge in the impugned judgment had assigned cogent reasons to arrive at such conclusion.

5.2 As discussed above in this judgment, the prosecution successfully proved that near the cabin of witness Vitthalbhai Bharvad, accused was quarreling with the deceased. Upon hearing the noise of the quarrel, complainant Menaben, witnesses Manubhai and Nanduben, came out from their home and went near the cabin of Vitthalbhai Bharvad. From there they brought the deceased and while they were proceeding towards their home, the accused went to his house to bring the lethal weapon – Dhariya, and carrying weapon in his hand he came near the deceased and inflicted the fatal blow.

5.3 Therefore, here it is not the case where during the course of quarrel, the accused inflicted the fatal blow on the body of the accused. As per the prosecution case, the quarrel was pacified and thereafter the accused committed act of inflicting Dhariya blow on the body of the deceased. Thus, there is nothing on record to show that the act

committed by the accused was direct result of any instigation or provocation provided to him by the deceased. Moreover, considering the medical evidence on record, the prosecution examined Dr.Rajendrakumar Shrivastav at Exhibit – 21 and Dr.Shrivastav in his deposition stated that he performed the '*postmortem*' and during the course of postmortem, he found external injury of incised wound on left side of neck, which extended upto the left side of chest, measuring 5" x 2"to 3" x chest cavity deep, cutting 2nd & 3rd left ribs. The external injuries caused vital internal injury and according to Dr.Shrivastav, the internal injuries were corresponding to external injuries. Dr.Shrivastav in his deposition at Exhibit – 21 and in the '*postmortem report*' at Exhibit – 22, opined that the cause of death was cardio-respiratory failure due to shock following the chest injury. It becomes clear that the nature of the weapon used by the accused was dangerous weapon and the forceful use of the weapon to cause injury to the deceased resulted into injury on the vital part of the body of the deceased, causing the death of the deceased. Dr.Shrivastav during the course of his deposition further opined that the injuries were sufficient in ordinary course of nature to cause death. In light of above discussions, it can safely be said that the accused inflicted the fatal blow on the vital part of the body of the deceased with dangerous weapon like Dhariya with the intention of causing fatal bodily injury and the bodily injury intended to be inflicted was sufficient

in the ordinary course of nature to cause death. Moreover, as stated above, there is nothing to prove that the present case falls within any of the exceptions provided u/s.300 of the IPC. Under the circumstances, the learned Additional Sessions Judge, did not commit any error in arriving at the conclusion that the accused had committed offence of murder punishable u/s.302 of IPC.

6.0 In light of the entire above discussions, the learned Additional Sessions Judge did not commit error, while appreciating the evidence on record adduced by the prosecution, in coming to the conclusion that the accused committed an offence of murder punishable u/s.302 of IPC and has rightly convicted and sentenced the accused for the aforesaid offence to undergo imprisonment for life, and therefore, we find no reason to interfere with the impugned judgment and order rendered by the learned Additional Sessions Judge on dated 28.01.2000 in Sessions Case No.285 of1998. In the result the present appeal deserves to be dismissed and is hereby dismissed.

[K.S. JHAVERI, J.]

[J.C. UPADHYAYA, J.]

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